

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1235 of 1996

in

SPECIAL CIVIL APPLICATION No 7085 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No

4. Whether this case involves a substantial question No :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No :

YUSUFALI TAHERALI

Versus

COMPETENT AUTHORITY AND DY. COLLECTOR (U.L.C.)

Appearance:

MR SURESH M SHAH for Appellant
MR VB GARANIYA, A.G.P. for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE A.L.DAVE

Date of decision: 26/10/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated September 19, 1996 rendered by the learned Single Judge in Special Civil Application No. 7085/96, by which challenge to final statement made by the Competent Authority under section 9 of the Urban Land (Ceiling and Regulation) Act, 1976 and order dated August 26, 1996 rendered by the Urban Land Tribunal at Ahmedabad in Appeal No. Rajkot-47/94 confirming the issuance of final statement, is negatived.

2. The undisputed facts indicate that the partnership firm in the name and style of "Asian Iron Works" had filed its declaration in the prescribed form under section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 ("Act" for short) through its then managing partner one Mr. Asgarali Fidaali. The said form was processed by the Competent Authority and Deputy Collector, Urban Land Ceiling, Rajkot and a draft statement was prepared on September 29, 1982 indicating the particulars of vacant lands held by the firm. The draft statement was served on Mr. Asgarali Fidaali who had filed objections against the same. After considering the objections, Competent Authority had, by an order dated January 29, 1985 declared land admeasuring 425.42 sq.mts. to be excess land. The order passed by the Competent Authority on January 29, 1985 was taken into revision by the Government in exercise of powers under section 34 of the Act and by an order dated December 21, 1993 it was held that extent of excess land was 524.51 sq.mts. Thereupon final statement as contemplated by section 9 of the Act was made by the Competent Authority on June 13, 1994. The making of final statement was challenged by the appellant before the Urban Land Tribunal at Ahmedabad under section 33 of the said Act. The Tribunal dismissed the appeal by an order dated August 26, 1996 which was challenged by the appellant in Special Civil Application No. 7085/96. The petition filed by the appellant was summarily rejected by the learned Single Judge vide judgment dated September 19, 1996, giving rise to present appeal.

3. The appellant had also filed Civil Application No. 11442/97 in Letters Patent Appeal No.1235/96 claiming following interim relief during the pendency and final hearing of the appeal :-

"5(a): Pending hearing and final disposal of this appeal, implementation and operation of the order Annexure-A to the memo of Special Civil

Application No. 7085/96 and further proceedings of Urban Land Ceiling Case No.6(1)/998 of 1976 before the Competent Officer and Deputy Collector, Rajkot, the respondent no.1 herein, having his office at Old West Hospital Building at Rajkot, may kindly be ordered to be stayed."

4. After summary dismissal of the petition, but before the Letters Patent Appeal as well as Civil Application filed therein were placed for admission hearing, the Competent Authority had issued notice dated November 21, 1997 informing the appellant that notification under section 10(3) of the Act was issued and the appellant should hand over possession of the excess land within 30 days on receipt of the notice as contemplated by section 10(5) of the Act.

5. The Letters Patent Appeal as well as Civil Application filed therein were placed for admission hearing before Division Bench and by order dated December 12, 1997, appeal was ordered to be admitted. In Civil Application, following order was passed :-

"Rule returnable on 30.12.97. Interim stay in terms of para-5(a) is granted till then."

As interim relief was limited to December 30, 1997, Civil Application was again placed for hearing on that day and the Division Bench had passed following order :-

"Adjourned to 19th January, 1998. Interim relief to continue till 28th January, 1998"

The order sheet of Civil Application indicates that interim stay which was granted by order dated December 12, 1997 was continue from time to time and ultimately on June 19, 1998, following order was passed:-

"Mr. S.M.Shah for the applicant. Mr. K.C.Shah for respondents. Heard the learned Counsel. Interim relief dated 12th December, 1997 is hereby confirmed to last till the pendency of the appeal with liberty to the respondents to apply for vacation/modification of this order, if there is any subsequent development. Civil Application is decided accordingly. Rule is made absolute accordingly.

(M.R.Calla,J.)
(J.R.Vora, J.)"

6. The Parliament has enacted The Urban Land

(Ceiling and Regulation) Repeal Act, 1999. Section 4 of the Repealing Act provides that all proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate. The proviso to the said Section makes it clear that section 4 shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority. We may state that the learned Counsel for the appellant has stated at the bar that possession of the land which is declared to be excess land is not taken from the appellant. As observed earlier, after summary dismissal of the petition by the learned Single Judge, notice was received by the appellant calling upon him to hand over possession of the excess land as contemplated by section 10(5) of the principal Act, but before it could be implemented, the same has been stayed by the Bench before which Letters Patent Appeal and Civil Application for stay were placed for admission hearing. Though liberty was reserved to the respondents to make application for vacation/modification of interim relief, it is not pointed out by the learned Counsel for the respondents that any such application was moved or interim relief granted earlier by the Court was either vacated or modified in any manner. Under the circumstances, there is no manner of doubt that possession of excess land has not been taken over by the State Government and, therefore, Letters Patent Appeal deserves to be disposed of as having abated. However, we express no opinion regarding legality or otherwise of the final statement issued under section 9 of the principal Act or the order passed by the Urban Land Ceiling Tribunal confirming issuance of final statement, as we are inclined to dispose of appeal as having abated.

For the foregoing reasons, the appeal is dismissed as having abated. There shall be no orders as to costs.

(patel)